

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA**

**GLENN H. GORTON,**

**Plaintiff,**

**vs.**

**FLOYD FRY, et al.,**

**Defendants.**

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**Case No. CIV-09-086-F**

**REPORT AND RECOMMENDATION**

Plaintiff, a prisoner appearing *pro se* filed this action pursuant to 42 U.S.C. §1983, alleging a violation of his constitutional rights. United States District Judge Stephen P. Friot has referred the matter to the undersigned Magistrate Judge for initial proceedings consistent with 28 U.S.C. §636(b)(1)(B). For the reasons set forth herein, the undersigned recommends that the complaint be dismissed without prejudice, due to Plaintiff's failure to pay the initial partial filing fee.

By order of this Court dated January 26, 2009, Plaintiff was required to pay an initial partial filing fee in the amount of \$2.00 on or before February 16, 2009. Plaintiff was advised that failure to pay the initial partial filing fee or show cause in writing for his failure to do so by the date specified, could result in dismissal of this action without prejudice to refiling.

A review of the court file reveals that as of this date, Plaintiff has not paid his initial partial filing fee, requested an extension of time within which to pay, or demonstrated any

cause for his failure to pay. Therefore, the undersigned recommends that this action be dismissed without prejudice to refiling. LCvR 3.4(a).

**RECOMMENDATION**

Accordingly, because Plaintiff has neither paid the partial filing fee as ordered by this court nor shown good cause for such failure, it is recommended that this action be dismissed without prejudice to refiling. Plaintiff is advised of his right to file an objection to this Report and Recommendation with the Clerk of this Court by March 24, 2009, in accordance with 28 U.S.C. §636 and Local Civil Rule 72.1. Plaintiff is further advised that failure to make timely objection to this Report and Recommendation waives his right to appellate review of both factual and legal issues contained herein. Moore v. United States, 950 F.2d 656 (10<sup>th</sup> Cir. 1991).

This Report and Recommendation disposes of all issues referred to the undersigned Magistrate Judge in the captioned matter.

**ENTERED** this 4<sup>th</sup> day of March, 2009.

  
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DOYLE W. ARGO  
UNITED STATES MAGISTRATE JUDGE